

REMARKS

Claims 1-5, 11 and 12 are pending in this application. All of the pending claims were rejected. Claims 1, 2, 4, 5, and 11 are currently amended. Reconsideration is requested.

Claims 1-5 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over English in view of Pinard. The Office concedes that English fails to teach the limitation of using available data rate and load of the alternative access point, but asserts that Pinard teaches those limitations. With regard to available data rate, the Office asserts that Pinard recognizes "the data rate of incoming broadcast signals." Applicant agrees. However, Pinard specifically teaches that the data rate observation is done by ASIC 33 in order to process signals at the appropriate rate. Pinard fails to teach that data rate should be used to evaluate an alternative access point, as recited in claim 1. Applicant therefore respectfully traverses, and requests that the rejection of claim 1 be withdrawn.

According to Pinard, AP selection is based on load factor and RSSI only. As shown in Figure 5 of Pinard, the AP with the lowest load factor is selected. If more than one AP has the same lowest load factor, then the AP with the highest RSSI is selected. Again, available data rate is not considered.

Claims 2-5, 11 and 12 are dependent claims which further distinguish the invention, and which are allowable for the same reason as claim 1. Further, with regard to claim 12, a handoff protocol is not equivalent to a communication protocol mode. Examples of communication protocol modes recited in the specification include IEEE 802.11x protocols.¹ Communication protocols including but not limited to IEEE 802.11x, GSM, UMTS, CDMA and TDMA are not limited to handoff. Further, Parks specifically teaches that the customer designates the handoff

protocol. Parks fails to teach that protocol is used by a wireless device to calculate data rate to evaluate an alternative access point. Withdrawal of the rejections of claims 2-5, 11 and 12 is therefore requested.

Claims 2, 4, 5 and 11 were rejected under 35 U.S.C. 112 for various informalities which have been corrected. A terminal disclaimer is being submitted with this response to overcome the double patenting rejection.

Should there be unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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¹ See, e.g., page 53, section 4.c.1